

INTRODUCED: 02/08/2016

REFERRED TO: Public Safety and Criminal Justice Committee

SPONSOR: Councillor Clay

DIGEST: amends Chapter 279 of the Code with respect to merit board member selection and the hiring, promoting and disciplining of police officers

SOURCE:

Initiated by: Councillor Clay

Drafted by: Fred Biesecker, General Counsel

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: _____ Date: February 2, 2016

CITY-COUNTY GENERAL ORDINANCE NO. , 2016

PROPOSAL 128, FOR A GENERAL ORDINANCE to amend Chapter 279 of the Revised Code of the Consolidated City and County respecting merit board member selection and the hiring, promoting, and disciplining of police officers.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Section 279-104 of the "Revised Code of the Consolidated City and County," regarding the Indianapolis Metropolitan Police Department Transitional Merit Process hereby is deleted in its entirety and reserved.

SECTION 2. Sections 279-233 thru 279-238 of the "Revised Code of the Consolidated City and County," regarding the Indianapolis Metropolitan Police Department Merit System hereby is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

Sec. 279-233. Appointment or election of board members; qualifications.

(a) In accordance with IC 36-8-3.5-1, the board shall be composed of ~~consists of nine (9) seven~~ ~~(7)~~ members as follows:

(1) Five (5) ~~Four (4)~~ members appointed by the director of the department of public safety;

~~(2) For the first term of the board, one (1) member appointed by the metropolitan law enforcement consolidation transition authority;~~

~~(3)(2) For all subsequent terms of the board, one~~ One (1) member appointed by the city-county council; and

~~(4)(3) Three (3) Two (2)~~ members elected by a majority vote of the active members of the department.

(b) An active member of the department may not serve on the board.

(c) The term of office for an appointed or elected member of the board is four (4) years, beginning on the date the member is qualified and assumes office, or for the remainder of an unexpired term. Members of the board serve during their respective terms and until their successors have been appointed and qualified; provided, however, that no member may serve for more than two (2) consecutive full terms.

(d) Not more than:

(1) Three (3) ~~Two (2)~~ of the members appointed by the public safety director; or

(2) Two (2) ~~One (1)~~ of the members elected by the members of the department;

may belong to the same political party.

(e) Each member of the board must reside in the county.

(f) Each member of the board may be removed for cause duly adjudicated by declaratory judgment of the Marion Superior Court.

(g) Each member of the board is entitled to receive reimbursement from the county for actual expenses incurred while serving as a member.

(h) As soon as practicable after they are appointed and elected, the members of the board shall meet upon the call of the public safety director and organize by electing a president, vice president, and a secretary from among their membership.

(i) Five (5) ~~Four (4)~~ members of the board constitute a quorum for the transaction of business. In the event of a tie, the board shall use its best efforts to reach a majority decision pursuant to the powers granted to it under Sec. 279-238(m). This may include remanding the proceeding or postponing to a time certain for further deliberation. However, if the board members still fail to reach a majority decision under Sec. 279-238(m), the recommendation of the chief shall be deemed adopted by the board.

(j) The board ~~must~~ shall ~~hold~~ schedule regular monthly meetings throughout the year as is necessary to transact the business of the department.

(k) The board shall review merit law from time to time and make proposals or recommendations to the Public Safety and Criminal Justice committee.

Sec. 279-234. Classification of ranks, grades and positions; ~~appointment and promotion of members. process phases and procedures for appointments and promotions.~~

(a) The board shall establish a classification of ranks, grades, and positions for members of the Indianapolis Metropolitan Police Department. For each rank, grade, and position, the chief, with the approval of the board, shall:

(1) Set reasonable standards of qualifications; and

(2) Fix the prerequisites of training, education, and experience.

~~(b) An individual may not be appointed or reappointed as a member of the department after December 31, 2006, unless the individual:~~

~~(1) Is less than thirty-six (36) years of age; and~~

~~(2) Passes:~~

~~a. The aptitude, physical agility, and physical examination required by the local board; and~~

~~b. The statewide baseline standards required by IC 36-8-8-19; however, this subsection does not apply to an individual who becomes a member of the department under section 279-103 of this chapter.~~

~~(c) The chief, with the approval of the board, shall devise and administer examinations designed to test applicants for the qualifications required for the respective ranks, grades, or positions. After these examinations, the chief and the board shall jointly prepare a list naming only those applicants who, in the opinion of both the chief and the board, best meet the prescribed standards and prerequisites. The chief only appoints members of the department from among the persons whose names appear on this list. All members appointed to the department under this chapter are on probation until after one (1) year of active duty from the date of the completion of the Field Training Officer Program. Active duty is defined as the time the probationary officer is assigned to perform the full duties and responsibilities required of members of the department, but does not include leave time due to illness, military leave, suspension from work or limited duty status, as these terms are defined by the general orders of the department.~~

~~(d) The chief, in his or her sole discretion, may:~~

~~(1) Establish a temporary administrative rank or position within the department; and~~

~~(2) Appoint to and remove from a temporary administrative rank or position a member of the department who meets the requirements in subsection (c) of this section.~~

~~(e) Except as provided by sections 279-103 and 279-104 of this chapter, a member who has served as a member of the department at least five (5) years before the appointment and holds the merit rank of at least lieutenant is eligible for appointment to a temporary administrative rank or position described in subsection (d) of this section. A member retains the rank, grade, or position awarded under subsection (c) of this section while serving in a temporary administrative rank or position. A temporary administrative rank or position established under subsection (d) of this section does not diminish or reduce the number and classifications of the existing merit ranks within the department. Subsection (d) of this section and this subsection may not be construed to limit, modify, annul, or otherwise affect a collective bargaining agreement.~~

(b) The merit board and the chief shall establish a merit selection process for all applicants seeking appointment as sworn members in the department, and a merit selection process for promotion to all merit ranks within the department. The merit board and the chief shall oversee the administration of each process.

(c) The chief, with approval of the board, shall establish process phases and procedures for use in screening applicants to the department and sworn members seeking promotion within the department. The board and the chief may use the services of professional consultants from outside the department to assist in developing and administering the process. The process phases shall be established in conformity with standard psychometric procedures, federal and state guidelines relating to selection methods, equal employment opportunity laws, court decisions and decrees that are binding on either the Indianapolis Police Department or the Marion County Sheriff's Department on the original effective date of this section, and generally acceptable law enforcement standards. The process may include, but need not be limited to, such phases as preliminary screening, physical agility testing, written examinations, interviews, background investigations, psychological testing, medical examinations, and polygraph examinations related specifically to the application process.

Sec. 279-235. Preferences for employment, promotions and appointments.

(a) Except as provided in subsection (b) and (c) of this section, the chief with the approval of the board shall give a preference for employment to a war veteran who has been honorably discharged from the United States Armed Forces to the following, all of which must be validated by the department:

(1) A person who has served in the military service and has received an honorable discharge from any branch of the service including the Coast Guard (as defined in IC 36-8-4-10); and any participant in the Army PaYS Program;

(2) A person whose mother or father was a firefighter of a unit, municipal police officer, or county police officer, who died in the line of duty (as defined in IC 5-10-10-2);

(3) A person who successfully graduated from a City of Indianapolis or Marion County high school; and

(4) A person who is a current resident, and has been a resident of Marion County for at least five (5) consecutive years prior to submitting an application for employment.

~~(b) The board shall establish process phases and procedures for use in screening applicants to the department and members seeking promotion or appointment within the department. The board and the chief may use the services of professional consultants from outside the department to assist in developing and administering the process. The process phases shall be established in conformity with standard psychometric procedures, federal and state guidelines relating to selection methods, equal employment opportunity laws, court decisions and decrees that are binding on either the Indianapolis Police Department or the Marion County Sheriff's Department on the original effective date of this section, and generally acceptable law enforcement standards. The process may include, but need not be limited to, such phases as preliminary screening, physical agility testing, written examinations, interviews, background investigations, psychological testing, medical examinations, and polygraph examinations related specifically to the application process.~~

~~(eb) A person described in subsection (a) of this section may not receive a preference for employment unless the person applies for such employment, and meets all employment requirements prescribed by:~~

~~(1) Law, including physical and age requirements; and~~

~~(2) The Indianapolis Metropolitan Police Department.~~

Sec. 279-236. Rules and regulations. Appointment to the department.

~~The board shall establish written rules and regulations governing the discipline of members of the department. Rules and regulations established under this section must conform to the disciplinary procedure required by section 279-237 of this chapter.~~

(a) An individual may not be appointed or reappointed as a member of the department unless the individual is at least twenty-one (21) years of age but has not reached his or her thirty-sixth (36th) birthday.

(b) Any individual appointment or reappointed as a member of the department must pass:

(1) The aptitude, physical agility, mental evaluation, and physical examination required by the local board; and

(2) The statewide baseline standards required by IC 36-8-8-19; however, this subsection does not apply to an individual who becomes a member of the department under section 279-103 of this chapter.

(c) The department shall administer the selection phases approved by the board. Based on the result of the process, the board may then reject candidates who, in the opinion of the chief and the board, would not be successful candidates for appointment. A final eligibility list shall then be jointly prepared by the chief and the board. Final recruit lists prepared as a result of the hiring process shall be in effect for two (2) years or until a new eligibility list for the next process is final, whichever occurs sooner. A new applicant process shall be initiated by the department no later than eighteen (18) months after a final eligibility list is approved by the board.

(d) The chief, with the approval of the board, shall appoint as recruit trainees such applicant or applicants as are necessary to fill any vacancies that exist in the Indianapolis Metropolitan Police Department. Eighty (80) percent of such vacancies to be appointed at one time by the chief shall be filled by taking the applicant having the highest score on the final eligibility list and proceeding down the list in order. The chief shall fill the remaining twenty (20) percent of the vacancies by selecting any person remaining on the final eligibility list, provided that the person resides within the department's service districts.

(e) Recruit trainees shall be assigned to the police training academy for a training course prescribed by the chief with the approval of the board. No recruit trainee shall be assigned to regular active duty until he or she has attended and successfully completed the training course so prescribed. Failure to complete the course successfully shall result in dismissal from the department. After completing the training course, the recruit trainee shall be elevated to the rank of probationary officer and shall be assigned to regular active duty. All members appointed to the department under this chapter are on probation until after one (1) year of active duty from the date of the completion of the Field Training Officer Program. Active duty is defined as the time the probationary officer is assigned to perform the full duties and responsibilities required of members of the department, but does not include leave time due to illness, military leave, suspension from work, or limited duty status, as these terms are defined by the general orders of the department.

(f) While an individual is in the status of recruit trainee or probationary officer, the chief may terminate or temporarily suspend an individual for cause, without a right to any hearing before the merit board.

Sec. 279-237. Promotions and appointed ranks.

(a) Upon completion of the process phases, an eligibility list shall be jointly prepared by the chief and the board for each merit rank in conformity with standard psychometric procedures. Final eligibility lists prepared as a result of a promotion process shall be in effect for three (3) years or until a new eligibility list for the next process is final, whichever occurs sooner. A new promotion process shall be initiated by the Department no later than twenty-four (24) months after a final promotion list is approved by the board.

(b) The chief, with approval of the board, shall make promotions to position vacancies identified by the chief and designated to be filled by the chief and the director. In making final selections for promotion, the chief shall promote the candidate who, in the opinion of the chief and the merit board, best meets the prescribed standards and prerequisites.

(c) The chief, in his or her sole discretion, may establish an administrative rank or position within the department, and appoint to and remove from the administrative rank or position a member of the department who has served as a member of the department at least five (5) years before the appointment and holds the merit rank of at least lieutenant. A member retains the rank, grade, or position awarded under subsection (b) of this section while serving in the administrative rank or position. An administrative rank or position established under this section does not diminish or reduce the number and classifications of the existing merit ranks within the department. This subsection may not be construed to limit, modify, annul, or otherwise affect a collective bargaining agreement.

Sec. 279-237. Sec. 279-238. Discipline; merit board procedures and appeals.

(a) The civilian police merit board of the Indianapolis Metropolitan Police Department shall establish disciplinary policies for use in all disciplinary matters of the department. The merit board, in conjunction with the chief, subject to approval of the director of the department of public safety, shall establish the written rules and regulations for the department. All disciplinary charges shall be based on these rules and regulations.

(b) Disciplinary actions within the department shall be in one (1) of the following forms:

- (1) Written reprimand;
- (2) Suspension without pay;
- (3) Demotion; or
- (4) Discharge.

(c) An officer may be placed on leave with pay for up to thirty (30) calendar days by the chief pending determination of final disciplinary action. Such leave with pay shall be considered a duty status and not a punishment.

(d) The chief shall have the ultimate authority to discipline any member of the department, subject only to the restrictions outlined below. In making his determination, the chief may refer the matter to a disciplinary board of captains for recommendation. Following his determination in a disciplinary matter, the chief may:

- (1) Issue a written reprimand.
- (2) Suspend an officer without pay for up to six (6) calendar months. If the suspension is for more than ten (10) working days, the officer may appeal that portion of the suspension greater than ten (10) days to the merit board. Such appeal must be made within thirty (30) calendar days of notice of the action.
- (3) Demote the officer in rank by one (1) merit rank. Any demotion may be appealed to the merit board within thirty (30) calendar days of notice of action.
- (4) Recommend discharge of the officer to the merit board. Upon referral of the matter to the merit board, the merit board shall conduct a de novo review of the discharge hearing of record as provided in subsection (k) of this section. Pending determination by the merit board, the officer shall be placed on suspension without pay.
- (5) Reinstate with pay any officer who previously was suspended without pay. Provided, however, that the chief shall consult with the director of the department of public safety regarding any discipline exceeding a ten-day suspension.

(e) Departmental superiors shall have the authority to discipline subordinate officers as outlined below. However, these superiors may recommend any of the above disciplinary actions to the chief through the chain of command.

- (1) Any member, other than the chief of police, who holds an appointed rank under Sec. 279-237(c) ~~The assistant chief, deputy chiefs and majors~~ may issue a written reprimand or suspend an officer for not more than ten (10) working days without pay. The chief may delegate additional disciplinary authority to the assistant and deputy chiefs.
- (2) Captains may issue a written reprimand or suspend an officer for not more than three (3) working days without pay.
- (3) Lieutenants may issue a written reprimand or suspend an officer for not more than two (2) working days without pay.
- (4) Sergeants may issue a written reprimand or suspend an officer for one (1) working day without pay.

(f) Officers in non-merit appointed ranks who are classified by the department as exempt executive, administrative or professional employees pursuant to the provisions of the Fair Labor Standards Act are not subject to unpaid disciplinary suspensions other than for violations of safety rules of major significance unless the suspension is for the period of an entire workweek or a specified number of full workweeks.

(g) All disciplinary actions taken by anyone except the chief shall be forwarded in writing to the disciplinary board of captains through the chain of command within three (3) working days of the action. The disciplinary board of captains shall ensure due process and consistency of discipline throughout the department. This disciplinary board may conduct an administrative review of the matter, request further investigation by internal affairs or other appropriate personnel, or hold a hearing on the matter.

(h) If a hearing is held by the disciplinary board of captains, the officer charged shall be notified in writing of the charges, the time and date of the hearing, and the officer's right to receive in advance of the hearing a copy of any witness statement or other document that will be considered at the hearing. In such hearings, and pursuant to departmental policy, the officer shall have the right to have counsel present and to have witnesses subpoenaed by the board of captains to testify in his or her behalf upon advance notice to the board. All testimony before the captains' board shall be under oath, and any individual appearing

before the board shall cooperate fully and answer all questions truthfully and directly. The hearing before the captains' board shall be conducted in accordance with the written directives of the chief and the merit board. After the hearing, the board of captains shall, upon majority vote, reduce to writing its findings of either guilty or not guilty.

(i) The disciplinary board of captains shall report the results of its review and/or hearing to the chief for determination. Included in this report shall be the disciplinary board's findings and recommendations. If the finding is "guilty," the disciplinary board shall also make its recommendations for punishment. The chief may concur with the captain's board in full or in part or may fully or partially reverse its recommendations.

(j) The disciplinary board of captains shall consist of three (3) officers holding the permanent merit rank of captain, who shall serve for a period of three (3) months. Each captain shall be selected at random. The names of the captains shall be drawn from a list of all eligible captains by the police officer ranking first on the most current sergeant's promotion list who shall serve for a period of three (3) months and who shall then be succeeded by the next highest ranking officer on such list who shall serve for a three-month period and so forth. If a vacancy occurs on the board of captains by reason of a board member becoming unable to perform his duties and serve on such board, the vacancy shall be filled in the same manner in which the board was selected.

(k) Disciplinary actions addressed by the merit board on appeal from the officer shall be handled through administrative hearing. This hearing shall be de novo and shall be a hearing of record. In making an appeal, the officer shall submit a written request for appeal to the merit board within thirty (30) calendar days of notice of disciplinary action. The merit board then shall schedule the hearing, providing the officer with at least fifteen (15) calendar days' notice prior to the hearing date; however, if there are criminal charges pending against the officer that arose from substantially the same conduct, circumstances, or subject matter that gave rise to the disciplinary action, then the merit board shall not conduct the hearing until after such criminal charges have been resolved at the trial level. The evidence before the merit board shall consist of the written charges and action taken on such charges, the findings of fact and recommendations from the chief and/or the disciplinary board of captains, and any other evidence requested by the merit board, or presented by the charged officer.

(l) The officer requesting an appeal and the chief may be represented by legal counsel before the merit board.

(m) After hearing the evidence, the merit board shall, by majority vote, reduce its findings and decision to writing. The merit board may fully or partially affirm, or reverse any portion of the chief's determination which is appealable. In addition, the merit board may remand the action for further review by the chief.

(n) If the officer is found not guilty by the merit board, any pay he or she may have lost due to suspension, or any rank lost due to demotion, shall be returned to the officer.

(o) Any officer who disagrees with the findings of the merit board shall have the right to file a verified petition to the Superior or Circuit Court of Marion County for a review of the decision. The petition for review must be filed within thirty (30) calendar days after the written decision of the board. The City of Indianapolis shall be the sole defendant in the petition for review. Within thirty (30) calendar days after the receipt of a summons, the city shall cause the merit board to file a true and complete copy of the transcript of the hearing with the court. The court, without jury, shall review the record and render its decision as in other administrative reviews. The clerk of the court shall send a copy of the court's decision to the Indianapolis Metropolitan Police Department and the appealing officer. Either party may appeal the decision of the court.

(p) For the purpose of all hearings before the disciplinary board of captains and the merit board, each shall have subpoena power enforceable by the circuit or superior court of the county.

(q) A copy of any disciplinary action taken and of the findings of fact and recommendations of the board shall be forwarded to the charged officer. In addition, if an officer is found guilty, notice of the action shall be forwarded to the merit board and made a permanent part of the officer's personnel record.

SECTION 3. The expressed or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 4. Should any provision (section, paragraph, sentence, clause, or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provision or provisions shall not be affected, if and only if such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the Council in adopting this ordinance. To this end the provisions of this ordinance are severable.

SECTION 5. This ordinance shall be in effect from and after its passage by the Council and compliance with Ind. Code § 36-3-4-14.

The foregoing was passed by the City-County Council this _____ day of _____, 2016, at _____ p.m.

ATTEST:

Maggie A. Lewis
President, City-County Council

NaTrina DeBow
Clerk, City-County Council

Presented by me to the Mayor this _____ day of _____, 2016, at 10:00 a.m.

NaTrina DeBow
Clerk, City-County Council

Approved and signed by me this _____ day of _____, 2016.

Joseph H. Hogsett, Mayor